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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/855,182

Applicant(s)

FELL ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 1-21, 23, 24, 26-28, 30, 31, 33, 39 and 45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22, 25, 29, 32, 34-38, 40-44 and 46-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 September 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5-7. 6) ☐ Other: \_\_\_\_\_

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1. Applicant's election without traverse of the species of Figures 18-19 with detachable primary connections in Paper No. 9 is acknowledged.
2. Claims 1-21, 23-24, 26-28, 30-31, 33, 39 and 45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 9.

The election of species set forth in Paper No. 8 is maintained as proper and made FINAL.

The Examiner maintains the position that no claims are generic because claims 1-21, 22-24, 27-29, 32 and 34 require fixed connection, i.e. nondetachable primary connections, which, e.g., does not read on the elected species which includes detachable primary connections or fixedly detachable attachment, or/and detachable second connections or secondary bonding which, e.g., does not read on the species of Figure 8 and page 21, last paragraph.

Claims 1-4, 6-12, 14-16, 19-20, 23-24, 27-28, 30, and 33 have been withdrawn, in addition to those determined by Applicant not to read the elected species, because such include fixed connections, see discussion in previous paragraph, or lateral spacing while Figures 18 and 19 show longitudinal spacing.

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

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4. The prior art cited in the specification has been noted but will not appear on the front of a patent, if any, unless such are cited on a PTO-892 or -1449 accompanying this action, since such citations are not in compliance with 37 CFR 1.56, 1.97 and 1.98.

5. The abstract of the disclosure is objected to because legal terminology, i.e. "comprises", should be avoided. Line 6 appears to be missing a word or words? Correction is required. See MPEP § 608.01(b).

6. The formal drawings filed 9-20-01 have been approved by the draftsman.

7. The drawings are objected to because the Figures are replete with informalities. For example: Figure 1, i.e. a partial section, and the description thereof on page 5, i.e. no partial section set forth, are not commensurate. This also applies to the description of Figure 18 on page 6 and Figure 18. In Figure 18, where is 404? 420? See page 8, lines 20-26 of specification. Throughout the Figures, structure has been denoted using more than one numeral separated by a comma, e.g. in Figure 3, "70,90". A line or arrow from each numeral to the structure it denotes should be set forth, i.e. no commas. In Figure 5, the third fold should be denoted 54 not 52. In Figures 5, 13, 14, 16, and 17, where are inner edges 60, 62, see page 12, line 16? The edges 60, 62, 66, and 68 are shown differently in Figure 1 and its cross section of Figure 2, see page 9, line 1. In Figure 8, where are 90 and 88, see page 14, lines 17-18 of the description? In Figures 1-6, where are bond regions 74, see page 14, line 26-page 15, line 15? In Figure 11, 49 does not denote the uppermost fold, see page 17, line 6. Also 50 does not the edge of layer or fold 46. In Figure 3, where is 86, see page 19, lines 25-26? In Figure 1, 80 does not denote the liner as

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shown in Figure 2. In Figure 3, the rightmost 46 does not denote the fold and thus is inconsistent with the other Figures. In Figure 12, the rectangle denoted 78 at the right should be shown as underlying fold 358. In Figure 8, the structure denoted by the numerals, 46, 48, 52, 54, 356, 358, 770, 790 appears to be incorrect because such structure underlies other structure, i.e. the lines leading from each numeral should be dashed. This also applies to the upper 44 in Figure 15.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

8. The use of the trademark VELCRO(R)(page 8) and Lycra(page 21, line 23, second occurrence) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Trademarks should be shown either with the trademark being in all capital letters or accompanied by a symbol, i.e. not both.

9. The disclosure is objected to because of the following informalities: The specification is replete with informalities. For example: 1) The descriptions of Figures 1 and 18 on pages 5-6 and Figures 1 and 18 are not commensurate, see discussion supra. 2) Are "Alliance" (page 9, line 15) and "Oasis"(page 9, line 28) trademarks? If so, they should be properly denoted as such. 3) The

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description on page 12, lines 3-10 and that on page 12, lines 10-12 is not clear, i.e. should the "1.0" be --1.9--? Or is the factor rounded down? A clear description should be provided. 4) The description of Figure 2 on page 5 and that on page 9, line 1 is not commensurate, i.e. is Figure 2 the cross section of Figure 1? 5) On page 14, line 15, what topsheet? 6) The description on page 15, lines 13-15, i.e. bonds are primary bonds on ends, and page 15, lines 15-16, bonds 72 and 74 are bonds on end and lateral edges, are inconsistent. 7) Page 13, lines 6-8 and page 15, lines 15-16 are grammatically incorrect. 8) Where is the primary bond region at the end of the cover 42, also denoted 94, described? Where is 94 described? 9) On page 18, line 22, "composite" should be --element--.

Appropriate correction is required.

10. Claims 22, 25, 29, 34-38, 41-42, 44 are objected to because of the following informalities: In claim 22, line 8, "a"(2nd) should be --the--. In claims 25, 29, 34-38, 41-42, and 44, the preamble, i.e. "the invention", should be consistent with the independent claim it depends from. For example, in claim 25, line 1, "invention" should be --method--. In claim 34, lines 1 and 3, after "said", --at least one-- should be inserted. In claim 37, line 3, "with said" should be --with a said--. In claim 38, lines 3 and 6, "said..region" should be --said at least one...region--. Also, line 5 is missing a word or words. In claim 42, line 1, after "connected to", --said outer surface of-- should be inserted. On line 3, insert --said-- before "at--. In claim 43, "garment side" and "bodyside" should be --garment-side-- and --body-side--. Appropriate correction is required.

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11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 22, 25, 32, 36, 37, 38, 40-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Milby, Jr. et al.

Claim 22, lines 3-7: see Figures, col. 1, lines 58-67, col. 2, lines 5-8, 19-31, col. 6, lines 11-17, 40-42, 66-67, i.e. chassis is panty or undergarment, absorbent element is 20, first location is 30, second location is 115 and first and second portions are portions of pleat 110; lines 1-2 and 8 et seq: see portions already cited and col. 7, lines 6-15.

Claims 25 and 36: element 24.

Claims 32 and 38: see portions of Milby cited supra, i.e. primary bond is 30, primary bond region is where element 30 connects to the panty, secondary bond is 115 and secondary bond region is where 115 connects to the backsheet. The secondary bond dissolves but the primary bond does not, i.e. primary bond is stronger than secondary bond during use.

Claim 37: see col. 6, lines 25-26, and thus Figures 3-4, elements 240, 242, 244 and col. 3, lines 33-51 of '697, i.e. the panty has spaced apart panels and is connected to each, at least indirectly, via the crotch portion with the bond 30. The claim language does not require a bond between each panel and the element directly.

Claim 40: garment is a diaper or training pant or incontinent briefs, see col. 3, lines 2-6, in

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which the chassis is a topsheet 24 of apertured plastic film, see col. 5, lines 37-38, the opening is one of the apertures, the absorbent element is the absorbent material 28 supported by cover or backsheet 26, which is extensible, see page 22, line 1 of the instant specification, due to the pleats, which is attached to the outer surface of the topsheet at the opposite sides thereof, and thereby of the opening. See portion cited supra for lines 7 et seq of the claim.

Claims 41-42: see discussion of previous claims.

13. Claims 43-44 and 46-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Clemson.

Claims 43 and 44: chassis is 12, absorbent element is 20 and pad (not shown, see page 3, line 14), and connection is stitching, i.e. sentence bridging pages 2-3 and page 3, lines 3-4, or absorbent element is pad and connection, and thus first location, is overlap, see page 3, lines 3-21.

Claims 46-48: see discussion of claims 43-44 and paragraph bridging pages 4-5.

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor



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and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

16. Claims 29 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Milby, Jr. et al in view of Roeder.

The Milby patent shows the second location 110 as comprising a pair of laterally spaced secondary locations in Figures 2 and 3 but only one longitudinally extending first location whereas Applicants claim a pair of laterally spaced parallel first locations. However, see col. 6, lines 11-13 of Milby and Figures 1, 2 and 4 of Roeder. To make the one first location of Milby at least a pair of laterally spaced parallel first locations instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Roeder.

17. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Milby, Jr. et al in view of Osborn, III et al.

Applicants claim the absorbent material comprising folds. See col. 4, line 4 and col. 6, lines 44-46. Also note title, element 46 in figure 6 and col. 29, line 47--col. 30, line 3 of Osborn, III et al, i.e. "acquisition layer" as known include absorbent material and folded sheets. To employ an acquisition layer of folded absorbent material on the Milby device, if not already, would be obvious to one of ordinary skill in the art in view of the recognition that it is known "acquisition layer" includes such structure as taught by Osborn. In so doing, the absorbent material would comprise folds as claimed.

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18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other prior art references show expandable features and/or multiple use.

19. Any inquiry concerning this communication should be directed to K. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday.

KMR

January 9, 2003

*K. M. Reichle*  
KARIN REICHLER  
PATENT EXAMINER